

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates:

PLAINTIFF(S)

17-cv-04642 (*Smith v. 3M Co., et al.*)

RESPONSE IN OPPOSITION TO DEFENDANT’S MOTION TO DISMISS

NOW COMES Plaintiff, Diane Smith, identified in Defendants’ Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1189], and by and through undersigned counsel submits this, her Response to Defendants’ Motion to Dismiss, and would respectively show the Court the following: Defendants have asked the Court to dismiss this action with prejudice for failure to comply with the Court’s Pretrial Order No. 14 (“PTO 14”), which requires a plaintiff to serve a completed and signed Plaintiff Fact Sheet (“PFS”), medical authorization, and supporting documents.

PLAINTIFF’S ACTION SHOULD NOT BE DISMISSED WITH PREJUDICE

Plaintiff has yet to return the documents set forth by this Court’s PTO 14. Plaintiff is aware of the obligations regarding completing and serving PFS, medical authorization, and supporting documents, pursuant to PTO 14. However, to be precise, the undersigned counsel is without any knowledge of circumstances that may preclude Plaintiff from responding to the counsel’s contact attempts and efforts or completing the Court mandated

PFS and medical authorization. The undersigned counsel attempted to reach Plaintiff numerous times including but not limited to the following:

10/26/2017- Mailed PFS and Authorization

11/21/2017- Spoke with client following on PFS. Resent PFS to same address.

12/14/2017- Called and left VM following on PFS.

1/29/2018- Called and left VM following on PFS. Spoke with husband and requested return.

2/12/2018 – Mailed Call Me Letter to client.

2/12/2018- Called and left VM following on PFS.

2/15/2018- Attempted contact on multiple occasions via phone.

2/16/2018- Attempted contact via phone.

2/21/2018- Attempted contact via phone

3/7/2018- Attempted contact via phone

3/13/2018- Attempted contact via phone and email

3/15/2018- Attempted contact via email

3/22/2018- Attempted contact via phone

4/6/2018- Mailed Motion to Dismiss and sought immediate client contact

In light of the foregoing, the undersigned counsel respectfully seeks a 120-day extension on PTO 14. Nevertheless, if the Court deems dismissal of Plaintiff's action to be proper, then they should be dismissed without prejudice granting an opportunity for Plaintiff to reinstate her action.

Dated: 4/11/2018

Respectfully submitted,

s/Tayjes Shah

Tayjes Shah, Esq.
The Miller Firm, LLC
108 Railroad Ave.
Orange, VA 22960
P: 540-672-4224
Email: tshah@millerfirmllc.com

CERTIFICATE OF SERVICE

This is to certify that on April 11, 2018 a copy of the foregoing document was served on all parties via the Court's electronic filing system.

Respectfully submitted,

s/Tayjes Shah

Tayjes Shah, Esq.
The Miller Firm, LLC
108 Railroad Ave.
Orange, VA 22960
P: 540-672-4224
Email: tshah@millerfirmllc.com